

**COMMUNITY AFFAIRS**

**DIVISION OF CODES AND STANDARDS**

**Continuing Care Retirement Communities**

**~~Proposed Readoption:~~ N.J.A.C. 5-19**

Authorized By: Susan Bass Levin, Commissioner, Department of Community  
Affairs.

Authority: N.J.S.A. 52:27D-358.

~~Proposal Number: PRN 2002-~~

Calendar: Reference: See Summary below for explanation of exception to calendar  
requirement.

Submit written comments by ~~December 6, 2002~~ to:

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**SUSAN BASS LEVIN, Commissioner**

The agency proposal follows.

### **Summary**

Pursuant to N.J.S.A. 52:14B-5.1, the Continuing Care Retirement Community Rules, N.J.A.C. 5:19, are scheduled to expire on June 22, 2003. The Department has reviewed these rules and finds that they continue to be necessary to implement the Continuing Care Retirement Community Regulation and Financial Disclosure Act, P.L. 1986, c.103 (N.J.S.A. 52:27D-330 et seq.) and is therefore proposing that they be readopted without change.

The Continuing Care Retirement Community Regulation and Financial Disclosure Act is intended to protect persons who enter into continuing care contracts with providers. Under these contracts, people pay entrance fees, and may pay periodic fees as well, in exchange for lodging and health care services for the rest of their lives. Providers are required to obtain a certificate of authority from the Department before establishing, operating or administering a continuing care retirement facility in New Jersey, to make full and accurate disclosures to potential residents and to maintain financial reserves adequate to ensure the services contracted for will actually be provided. Violators are subject to civil penalties, administrative cease and desist orders and court injunctions, and facilities may be placed in receivership if violations occur.

The rules proposed for readoption establish specific requirements for certification of facilities, applications for certification, disclosure statements, advertising, contracts, financial responsibility, nonbinding reservation agreements and administration and enforcement procedures. These rules are necessary for the proper implementation of the Act. Rules promulgated by the Department of Health and Senior Services regulate the provision of services in the facilities.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

Readoption of these rules will enable the Department to continue to discharge its statutory duty to protect residents and potential residents of continuing care retirement communities by making sure that the facilities are run by responsible providers and that the services advertised and contracted for are provided. Failure to readopt the rules would eliminate the standards needed to provide this protection.

There are currently 27 active certified providers of continuing care retirement communities. They operate 27 facilities containing, in the aggregate, 8,304 independent living units, 1,543 assisted living, comprehensive personal care or residential health care units and 2,111 long-term care beds. The increased demand for facilities of this sort is made clear by the fact that five years ago, by contrast, there were only 21 active certified providers, 21 facilities, 4,576 independent living units, 799 assisted living,

comprehensive personal care or residential health care units and 1,211 long-term care beds.

### **Economic Impact**

Failure to readopt these rules would eliminate the fees that are required by the Department to pay the cost of enforcing the Act and would thus subject residents and potential residents to the possible loss of life savings. Costs of compliance to providers vary, depending, for example, on the type of advertising used and disclosure statement provided. Other costs, primarily legal, which are required by the Department's application process, would be incurred in the normal course of development of such a project, as planning and zoning approvals are sought. Filing fees include \$400.00 plus \$40.00 per unit planned for each application for a certificate of authority, \$130.00 plus \$13.00 per unit for annual disclosure statements, \$250.00 for an application for certification to permit acceptance of nonbinding reservations and \$50.00 for a letter of nonapplicability. The rules also limit application fees that may be charged by providers and limit to amounts well below the statutory limit of \$50,000 the penalties that may be levied by the Department in cases not involving dishonesty in dealing with residents or prospective residents or willful disregard of the rights of residents.

### **Federal Standards Statement**

No Federal standards analysis is required because this rule is not being readopted under the authority of, or in order to implement, comply with or participate in any program established under, Federal law or a State law that incorporates or refers to Federal law, standards or requirements.

### **Jobs Impact**

The Department does not anticipate any net creation or loss of jobs as a result of the readoption of this chapter.

### **Agricultural Industry Impact**

The Department does not anticipate any impact upon the agricultural industry as a result of the readoption of this chapter.

### **Regulatory Flexibility Statement**

These rules affect providers who develop and operate continuing care retirement communities. It is possible that some current providers would qualify as "small businesses" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., or that future applicants might so qualify. Compliance requirements imposed by the rules

are discussed in the Summary and Economic Impact statement above. There would, however, be no basis for imposing lesser requirements for any “small business” providers, since the rules are necessary for the protection of a potentially vulnerable sector of the public. The rules do not require providers, “small business” or otherwise, to secure any professional services, or incur any costs, that they would not have to secure or incur in the ordinary course of business or that are not imposed by the Act itself.

### **Smart Growth Impact**

The Department does not anticipate any impact upon “smart growth” or the implementation of the State Development and Redevelopment Plan as a result of the readoption of these rules.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:19.